Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Technology Transitions Policy Task Force Seeks Comment on Potential Trials	)	GN Docket No. 13-5
	)	
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition	)	GN Docket No. 12-353
	)	
Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution	)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association ("CCA") hereby submits this reply in response to the opening comments in the above-captioned proceeding. The Technology Transitions Policy Task Force ("Task Force") proposed a series of "real-world trials" to assist the Commission's efforts to establish policies and identify issues necessary to facilitate the industry's ongoing transition to telecommunications networks utilizing Internet Protocol ("IP") technology.[1] CCA takes no position on the need for or appropriate design of any such trials, but, more broadly, CCA has long supported the Commission's efforts to facilitate the transition to IP-based interconnection arrangements as long as the bedrock safeguards set forth in Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"), remain in place and are applied to such arrangements. The opening comments reinforce the need to maintain that critical regulatory backstop, irrespective of carriers' increasing reliance on packet-switching equipment.

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[1] Public Notice, *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, DA 13-1016, at 1 (rel. May 10, 2013) ("*Public Notice*").

DISCUSSION

Before the Commission issued the *Public Notice*, CCA and a number of other associations and companies representing a broad cross-section of the telecommunications industry submitted a letter in response to AT&T's proposals regarding the time-division multiplexing ("TDM")-to-IP transition.[2] As CCA emphasized in that letter, and as the opening comments now confirm, the ongoing transition to IP-based networks, and any trials related thereto, must remain subject to regulatory oversight pursuant to the technology-neutral interconnection provisions set forth in Sections 251 and 252 of the Act.

As an initial matter, the opening comments reflect competitive carriers' growing frustration based on their inability to establish reasonable IP-to-IP interconnection arrangements with the largest incumbent local exchange carriers ("ILECs"). For example, Sprint noted that, despite its efforts, it "has yet to obtain IP-to-IP interconnection for voice traffic from any of the major ILECs,"[3] while T-Mobile stated that it is unaware of any IP-to-IP interconnection agreements "involving Regional Bell Operating Companies and other large ILECs."[4] The American Cable Association ("ACA") similarly explained that its members have faced impediments in exchanging VoIP traffic,[5] and XO Communications indicated that "most ILECs have refused to abide by interconnection obligations . . . to exchange IP-based voice traffic with

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2 Letter from Ross Lieberman, ACA, Karen Reidy, COMPTEL, Rebecca Murphy Thompson, CCA, and Catherine R. Sloan, CCIA, to Marlene H. Dortch, FCC, GN Docket No. 12-353 (filed Mar. 21, 2013) ("Competitive Carrier Letter") (submitted by CCA in GN Docket No. 13-5 on Mar. 22, 2013)..

3 Comments of Sprint Nextel Corporation, GN Docket No. 13-5, at 7 (filed July 8, 2013) ("Sprint Comments").

4 Comments of T-Mobile USA, Inc., GN Docket No. 13-5, at 8 (filed July 8, 2013) ("T-Mobile Comments").

5 Comments of the American Cable Association on Public Notice DA 13-1016 on Potential Trials, GN Docket No. 13-5, at 2 (filed July 8, 2013) ("ACA Comments").

requesting carriers."[6] Any subsequent trial should not negate the evidence to date of extensive failures to reach interconnection agreements. The FCC must continue to rely on the technology-neutral interconnection provisions set forth in Sections 251 and 252, rather than an ILEC's "best behavior".[7]

Based on their strategic goal of removing IP-based interconnection arrangements from the purview of Section 251/252, AT&T, Verizon, and other large ILECs generally have refused to characterize any IP traffic-exchange arrangements as "interconnection agreements" at all.[8] Indeed, ILECs have asserted that they are "unable" or "ha[ve] no duty to interconnect … for the exchange of IP traffic," based on the unsupported and incorrect conclusion that the unsettled regulatory status of retail VoIP services means that IP voice traffic somehow falls outside the scope of Section 251.[9] Moreover, as T-Mobile explained, to the extent the largest ILECs are

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6 Comments of XO Communications, LLC on Technology Transitions Policy Task Force Public Notice Seeking Comment on Potential Trials, at 8 (filed July 8, 2013) ("XO Comments").

7 *See, e.g.*, ACA Comments at 6, n.17 (quoting Sean Lev, Acting Director, Technology Transitions Policy Task Force, Remarks at TIA Network Transition Event (June 21, 2013) ("However we move forward, if we're trying to test the consequences of different regulatory frameworks, we need to ensure that the results don't simply reflect carriers on their 'best behavior.'"); *see also Public Notice* at 12, n.49.

8 *See, e.g.*, Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252, Order Opening an Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA's Motion to Dismiss or Stay the Proceeding, Docket No. 13-6, at 9 & n.6 (Ma. Dep't of Telecomm. & Cable May 13, 2013) ("Verizon MA disputes that an agreement for the exchange of VoIP traffic in IP format constitutes an interconnection agreement under 47 U.S.C. § 251" and "asserts that unless the FCC determines otherwise, agreements for the exchange of VoIP traffic in IP format are unregulated and not subject to the requirements of 47 U.S.C. §§ 251 and 252.").

9 T-Mobile Comments at 9; *see also, e.g.*, Sprint Comments at 8 (quoting Verizon's statements to the Massachusetts Department of Telecommunications and Cable, which

willing to discuss such agreements at all—typically on the condition that they would be classified as purely commercial arrangements—"they typically insist on a range of problematic [terms]" that are inconsistent with their duties under the Act.[10]

The ILECs' efforts to evade their Section 251 obligations in this context cannot be squared with the language of the Act or with Commission precedent. As CCA and other commenters have shown, the requirements of Sections 251(a), (b), and (c) are technology-neutral and thus apply fully to carriers' IP-based telecommunications networks and traffic.[11] And the Commission itself has recognized that the interconnection obligations set forth in Section 251 "do[] not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise."[12] Moreover, the Commission held several years ago that IP-based voice traffic is "'*telecommunications*' traffic, regardless of whether retail interconnected VoIP service

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asserted that "'the FCC has never concluded that Section 251(c) … applies to IP voice interconnection agreements'" (internal citation omitted)); XO Comments at 8.

10 T-Mobile Comments at 8 ("[A] 'trial' with no backstop has already effectively been underway before and since the Commission directed parties to negotiate IP interconnection in good faith in the *USF/ICC Transformation Order*—without providing additional regulatory backup."); *See Public Notice* at 5.

11 *See, e.g.*, Competitive Carrier Letter at 2-3 (explaining that Sections 251(a), (b), and (c) apply to the exchange of voice traffic irrespective of the technology used by the interconnecting providers); Comments of the Competitive Carriers Association, GN Docket No. 12-353, at 8-10 (filed Jan. 28, 2013); Sprint Comments at 7 (quoting *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 1342 (2011)); Comments of NTCA—The Rural Broadband Association, GN Docket No. 13-5, at 6 (filed July 8, 2013) ("NTCA Comments") (accepting that Sections 251 and 252 apply to IP interconnection agreements and stating that "it would be premature for the Commission at this time to, *a priori*, jettison th[at] framework").

12 *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 1011 (2011) ("*USF/ICC Transformation Order and FNPRM*"). *See also id.* ¶¶ 1342, 1352 (confirming technology-neutral nature of Section 251 obligations).

consists of a telecommunications service or information service."[13] The Commission also has held that a competitive carrier may obtain interconnection for the specific purpose of routing IP-originated and IP-terminated telephone exchange and exchange access traffic and that the *retail* classification of interconnected VoIP services has no bearing on carriers' *wholesale* interconnection obligations.[14] Nor can ILECs hide behind their corporate structure and claim that their reliance on separate affiliates to provide IP-enabled services somehow negates their obligations under Section 251 to provide interconnection, as the D.C. Circuit foreclosed such "circumvention of the statutory scheme" over a decade ago.[15]

By the same token, the policy justifications for requiring ILECs to interconnect their networks on reasonable and nondiscriminatory terms have not diminished simply because the technology for exchanging telecommunications traffic is changing. To the contrary, the record is now replete with evidence that "larger ILECs continue to dominate the interconnection and transit markets."[16] ACA provided a number of examples of the exercise of such dominance, including ILECs' insistence on numerous interconnection points, which "raise[s] the cost of

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13 *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶ 615 (2011) (emphasis added) (citing *Universal Service Contribution Methodology et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶¶ 39-41 (2006)).

14 *See Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as amended*, Declaratory Ruling, 26 FCC Rcd 8259 ¶ 26 (2011); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 15 (WCB 2007).

15 *Ass'n of Commc'ns. Enters. v. FCC*, 235 F.3d 662, 666 (D.C. Cir. 2001).

16 ACA Comments at 3.

service for [the interconnecting carriers] artificially."[17] And the fact that large ILECs refuse to exchange IP voice traffic with competitors when they already exchange such traffic with their own affiliates demonstrates the continued need for Sections 251 and 252 to act as the regulatory backstop in carriers' negotiations for interconnection arrangements involving the exchange of IP traffic.[18] Congress enacted Sections 251 and 252 to prevent the exercise of such market power, and to enable the development of a competitive telecommunications marketplace. Commission verification that those basic interconnection obligations continue to apply in the IP context therefore is necessary to protect the competitive advancements that have occurred since that time, particularly as AT&T and Verizon continue to increase their dominance as the two largest wireline *and* wireless carriers.

Relatedly, the Commission should reject AT&T's claim that the transition to IP has flourished, and will continue to do so, in an "unregulated marketplace," or that preserving interconnection safeguards for telecommunications traffic will somehow inhibit the transition.[19] As NTCA recognized, Section 252(a) ensures that carriers have the opportunity to negotiate market-based interconnection agreements without regard for the default substantive requirements set forth in Section 251.[20] Section 252 merely eliminates ILECs' ability to extract unreasonable concessions from competitors based on the threat of thwarting basic interconnection rights.

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17 *Id.* at 3-4.

18 *See, e.g.*, T-Mobile Comments at 9; Sprint Comments at 6 (explaining that "[t]he major ILECs have thus far avoided their interconnection obligations by housing their IP operations outside their regulated ILEC companies").

19 Comments of AT&T, GN Docket No. 13-5, at 23 (filed July 8, 2013) ("AT&T Comments"); *see also* Comments of Verizon and Verizon Wireless, GN Docket No. 13-5, at 2 (filed July 8, 2013).

20 NTCA Comments at 6 (stating that Sections 251 and 252 "provide carriers with the flexibility to pursue market solutions to interconnection issues, with a 'regulatory backstop' to ensure that *consumers'* connectivity is not lost in the event that an agreement cannot be reached" (emphasis in original)).

Finally, AT&T's attempts to equate IP-based telecommunications interconnection agreements to Internet peering and other arrangements involving Internet content are inappropriate.[21] The record makes clear that the interconnection of telecommunications networks is entirely distinct from Internet backbone/peering arrangements, both from a network architecture standpoint and as a policy matter, and thus requires a different regulatory approach.[22]

CONCLUSION

Preserving competitive carriers' interconnection rights remains as vital today as it was when Congress enacted the Telecommunications Act of 1996, if not more so. CCA applauds the Commission's continued efforts to prepare for and facilitate the transition to all-IP telecommunications networks. Whether or not the next step in those efforts involves the commencement of one or more IP-transition trials, the Commission should make clear that Sections 251 and 252 govern all telecommunications interconnection arrangements, including those that involve IP networks and traffic.

Respectfully submitted,

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21 *See* AT&T Comments at 23.

22 *See, e.g.*, XO Comments at 8; Competitive Carrier Letter at 3.